APPENDIX

L

STATE OF MICHIGAN

COURT OF APPEALS

CHARLES WILLIAM BUNCE,

Plaintiff-Appellee,

V

SECRETARY OF STATE,

Defendant-Appellant

FOR PUBLICATION
December 28, 1999
9:00 a.m.

No. 209122
Kent Circuit Court
LC No. 97-009848 AL

Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

Wilder, P.J.

Defendant appeals by leave granted from a circuit court order remanding for reconsideration by the Driver's License Appeal Division, plaintiff's petition for reinstatement of his driver's license under different standards than those employed by the defendant at the initial hearing. We reverse.

I

Background Facts and Procedural History

Plaintiff Charles Bunce was convicted of three alcohol-related driving offenses within a ten-year period: (1) operating while impaired by liquor on March 27, 1990, (2) operating while impaired by liquor on August 5, 1991, and (3) combined operating under the influence of liquor and unlawful bodily alcohol content on June 6, 1994. Following the third conviction, plaintiff's driver's license was revoked for a minimum of one year commencing July 13, 1994, pursuant to the mandatory habitual violator provision of the Michigan Vehicle Code, MCL 257.303(2)(f); MSA 9.2003(2)(f). Plaintiff was subsequently cited for driving without a valid license, and he received an additional one-year suspension of his license pursuant to MCL 257.904; MSA 9.2604.

Plaintiff became eligible to petition for reinstatement of his driver's license on May 21, 1997. Plaintiff filed such a petition resulting in a June 11, 1997 administrative hearing before defendant Secretary of State's Driver License Appeal Division. Plaintiff appeared without legal counsel at the hearing, and provided a current substance abuse

evaluation and documentation of sobriety. Plaintiff testified at the hearing that he had not consumed any alcohol for approximately three years. In addition, several of plaintiff's friends submitted letters generally attesting to plaintiff's sobriety. Plaintiff's substance abuse evaluation diagnosed him as alcohol-dependent, with a favorable prognosis for recovery and recommendation that plaintiff attend AA meetings.

In a written order, dated June 11, 1997, the hearing officer found that plaintiff "failed to establish by clear and convincing evidence that his substance abuse problem is under control and likely to remain under control, and has failed to establish a sufficient period of abstinence as required by Rule 13", and denied plaintiff's application for reinstatement of his license "because Mr. Bunce has failed to rebut the statutory presumption of MCL 257.303(1)." The hearing officer discounted the favorable substance abuse evaluation because, in the opinion of the hearing officer, the prognosis was based on plaintiff's self-report of abstinence.

Plaintiff appealed this decision to the circuit court seeking reversal of defendant's decision. The circuit court remanded plaintiff's case to defendant for reconsideration, with instructions that on remand, the hearing officer was either to require defendant to have the burden of proving that plaintiff's substance abuse problem was not under control, or alternatively, plaintiff should be permitted to establish by a preponderance of the evidence, rather than clear and convincing evidence, that his substance abuse problem was under control.

On February 10, 1998, the trial court granted a partial stay of its order, deciding that reconsideration should proceed under the lower standard of review, but any reinstatement of plaintiff's license should be withheld pending final resolution of this matter on appeal to this Court. On remand, defendant reviewed the evidence presented by plaintiff under a preponderance of the evidence standard, and again denied reinstatement of plaintiff's license in an order dated March 27, 1998. Plaintiff filed a petition for rehearing in the circuit court on April 2, 1998. On April 6, 1998, in an unrelated driver's license restoration case, [*Fortino v Secretary of State,* Kent Circuit Court, Docket #98-00295 AL] the circuit court issued an order holding that in that case the defendant had the burden of proving that petitioner's substance abuse problem was not under control, in order to deny restoration of petitioner's driving privileges. Based on this order, defendant reversed its decision in the instant case and granted plaintiff full driving privileges in an April 13, 1998, order. This Court granted defendant's application for leave to appeal.

II

Standard of Review

Statutory interpretation is a question of law that is subject to de novo review on appeal. *Port Huron v Amoco Oil Co,* 229 Mich App 616, 624; 583 NW2d 215 (1998). The general rules of statutory construction apply to administrative rulings. *Id.* at 631.

III

Analysis

Although not characterized as such below, in this appeal we are asked to consider two essential questions: 1) whether the legislature may delegate rulemaking authority to administrative agencies, and 2) assuming such authority may be delegated, whether an administrative agency possesses the authority to independently determine the evidentiary standard and burden of proof governing its administrative hearings. We answer both questions in the affirmative.

A. Scope of judicial review of driver's license restoration proceedings

At the outset, we note that the Michigan Vehicle Code ("MVC"), MCL 257.1 *et seq.;* MSA 9.1801 *et seq.*, expressly limits the scope of the circuit court's review of a revocation or denial of reinstatement of a driver's license under MCL 257.303(1)(f); MSA 9.2003(1)(f). Specifically, the MVC provides:

> In reviewing a determination resulting in a denial or revocation [of a driver's license] under section 303(1)(d), (e), or (f) or section 303(2)(c), (d), (e), or (f), the court shall confine its consideration to a review of the record prepared pursuant to subsection (3). The court shall set aside the secretary of state's determination only if the petitioner's substantial rights have been prejudiced because the determination is any of the following:
>
> (a) In violation of the Constitution of the United States, the state constitution of 1963, or a statute.
>
> (b) In excess of the secretary of state's statutory authority or jurisdiction.
>
> (c) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
>
> (d) Affected by other substantial and material error of law. [MCL 257.323(6); MSA 9.2023(6).]

The circuit court, by ruling that defendant was without authority to place the burden of proof on petitioners in driver's license restoration hearings, apparently did so under either subsection (b), (c), or (f). Therefore, our analysis will proceed accordingly.

B. Delegation of authority

Although the validity of the delegation of rulemaking authority to defendant under the MVC was not directly challenged or decided below, and perhaps was assumed, an examination of the scope of that authority is critical to the proper resolution of this case.

Defendant contends that the Legislature may appropriately delegate to it the authority to establish standard for reinstating a driver's license following a revocation as it did under MCL 257.303(4); MSA 9.2003(4), or to promulgate rules as it did under MCL 257.309(3); MSA 9.2009(3). We agree.

In *Dep't of Natural Resources v Seaman*, 396 Mich 299, 308; 240 NW2d 206 (1976), the Supreme Court held:

> The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government.

The court established three guiding principles for determining whether the discretionary authority conferred on an administrative agency is "sufficiently defined to avoid delegation of legislative powers":

> (1) The act in question must be read as a whole; the provision in question should not be isolated but must be construed with reference to the entire act.
>
> (2) The standard should be 'as reasonable precise as the subject matter requires or permits.'
>
> (3) If possible, the statute must be construed in such a way as to 'render it valid, not invalid' and as vesting 'discretionary, not arbitrary authority.' [*Id.* at 309; citations omitted.]

We find that the legislature delegated rulemaking authority to defendant under the MVC, and that such delegation complies with the above stated principles.

MCL 257.204; MSA 9.1904 confers to defendant general authority to "observe, enforce, and administer" the laws under the MVC. MCL 257.309(3); MSA 9.2009(3), expressly authorized defendant to promulgate rules regarding the examination of license applicants:

> The secretary of state shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for the examination of the applicant's physical and mental qualifications to operate a motor vehicle in a manner as not to jeopardize the safety of persons or property, and shall ascertain whether facts exist which would bar the issuance of a license under section 303. The secretary of state shall also ascertain whether the applicant has sufficient knowledge of the English language to understand highway warnings or direction signs written in that language. The examination shall not include investigation of facts other than those facts directly pertaining to the ability of the

applicant to operate a motor vehicle with safety or facts declared to be prerequisite to the issuance of a license under this act.

MCL 257.303(1); MSA 9.2003(1) prohibits defendant from issuing a license to "habitual violators" of the drunk driving laws:

> (1) The secretary of state shall not issue a license under this act to any of the following:
>
> ***
>
> (f) A person who is an habitual violator of the criminal laws relating to operating a vehicle while impaired by or under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance or with an alcohol content of .10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

MCL 257.303(4); MSA 9.2003(4) provides the only exceptions by which the defendant may issue a license to someone determined to be an habitual violator:

> The secretary of state shall not issue a license under this act to a person whose license has been revoked under this act or denied under subsection (1)(d), (e), (f), (i), or (j) until both of the following occur:
>
> (a) The later of the following:
>
> (i) The expiration of not less than 1 year after the license was revoked or denied.
> (ii) The expiration of not less than 5 years after the date of a subsequent revocation or denial occurring within 7 years after the date of any prior revocation or denial
>
> (b) The person meets *the requirements of the department.* (Emphasis added).

Reading these provisions in conjunction with the legislative scheme as a whole, we find that the rulemaking authority delegated by the Legislature to defendant is well defined and narrowly drawn. The legislation provides guidance to defendant which is apparent; it is the Legislature's intent that severe license sanctions be imposed on "habitual violators" of the drunk driving laws, and that the public be protected from potential harm.

The legislative determination that habitual violators must meet the requirements of the department before being issued or reissued a license is persuasive evidence that the

legislature delegated to defendant the authority to promulgate rules to effectuate its intent. Furthermore, the legislative delegation is "as reasonably precise as the subject matter requires or permits." *Seaman, supra* at 309. Finally, the statute here does not confer on defendant such broad power that it can act with unbridled, arbitrary authority. To the contrary, the statute sets forth specific conditions to be applied in license revocation and reinstatement proceedings. Therefore, we hold that, under the principles enunciated in *Seaman, supra* at 309, the discretion delegated by the legislature to defendant under the MVC, when read as a whole, is sufficiently defined to effectuate a valid delegation of rulemaking authority.

C. Administrative Rule 13

In accordance with the directives of MCL 257.303(4)(b), defendant promulgated 1992 AACS R 257.313(Administrative Rule 13). Under Rule 13, a petitioner for reinstatement of a driver's license whose license has been suspended pursuant to the habitual violator presumption established in Section 303 of the MVC must rebut the presumption by clear and convincing evidence. 1992 AACS R 257.313(1)(a). Rule 13 further articulated what evidence is relevant to rebut the presumption as well as what evidence the petitioner may introduce to establish by clear and convincing evidence that he has abstained from the use of alcohol for the specified period of time. 1992 AACS R 257.313(1)(b).

In determining the substantive validity of an administrative rule, Michigan courts employ a three-part test:

> Where, as here, an agency is empowered to make rules, the validity of those rules is to be determined by a three part-test: (1) whether the rule is within the subject matter of the enabling statute; (2) whether it complies with the legislative intent underlying the enabling statute; and (3) whether it is arbitrary or capricious. [*Dykstra v Dep't of Natural Resources,* 198 Mich App 482, 484; 499 NW2d 367 (1993) citing *Luttrell v Dep't of Corrections,* 421 Mich 93, 100; 365 NW2d 74 (1984).]

First, we find that Rule 13 is clearly within the subject matter of the MVC. As noted above, the MVC expressly authorizes the defendant to promulgate rules for examining an applicant's qualifications to operate a motor vehicle in a manner that will not jeopardize the safety of persons or property, and to ascertain whether facts exist which would bar the issuance of a license under Section 303. MCL 257.309(3); MSA 9.2009(3). Rule 13 carries out the legislative mandate by articulating certain facts and circumstances which, if present, would bar issuance of a driver license to an habitual violator of the drunk driving laws. Second, Rule 13 comports with the legislative intent to impose severe sanctions on habitual drunk drivers. Last, we find that Rule 13 is neither arbitrary nor capricious:

> A rule is arbitrary if it was fixed or arrived at through an exercise of will or by caprice, without giving consideration to principles, circumstances, or significance. A rule is capricious if it is apt to change suddenly or is

> freakish or whimsical. If a rule is rationally related to the purpose of the statute, it is neither arbitrary nor capricious. Further, if there is any doubt about the invalidity of a rule in this regard, the rule must be upheld. [*Blank v Dep't of Corrections*, 222 Mich App 385, 407; 564 NW2d 130 (1997); citations omitted.]

The factors articulated in Rule 13 are rationally related to the purpose of the statute. Whether, for example, petitioner has attempted to bring his alcohol problems under control but suffered relapses, or whether petitioner has ever submitted to a chemical test that revealed a blood alcohol content of 0.20% or more by weight of alcohol, or whether petitioner's alcohol evaluation reveals a diagnosis of alcohol dependency, are all factors rationally related to the legislative intent to severely sanction habitual violators and to enhance public safety.

In light of our conclusion that Administrative Rule 13 was promulgated pursuant to a valid legislative delegation of authority to defendant, and that the rule itself is a valid exercise of defendant's authority, we turn next to the dispositive issues on appeal, that is, what is the proper burden of proof and standard of proof to be applied in licensing reinstatement proceedings.

C. Burden of proof

Both the MVC and the Administrative Procedures Act "(APA)", MCL 24.201 *et seq.*; MSA 3.560(101) *et seq*., are silent on the burden of proof in a driver's license appeal hearing. Generally, in contested cases [Without citing authority, the circuit court determined that the APA contested case provisions applied in this case, and neither party disputed this determination. We agree with the circuit court's conclusion, and will also consider the issues before us under contested cases analysis.] under the APA, the proponent of an order or petition has the burden of proof and the burden of going forward. LeDuc, Michigan Administrative Law (1993), Section 6:42, Ch 6 – p 54. See also *Brown v Beckwith Evans Co*, 192 Mich App 158, 168; 480 NW2d 311 (1991). Because *plaintiff* petitioned for reinstatement of his license, we conclude that plaintiff is the proponent of the reinstatement order, and that plaintiff bears the burden to prove his eligibility at the reinstatement hearing.

In any event, just as a statute may reallocate the burden of proof, LeDuc, Section 6:42 at Ch6 – p 54, an agency can reallocate the burden of proof, either by rule or agency procedure, when necessary and consistent with the legislative scheme. LeDuc, 1998 cum supp, Section 6:42 at Ch 6 – p 99; *Zenith Industrial Co v Dep't of Treasury*, 130 Mich App 464, 468; 343 NW2d 495 (1983); *Superior Public Rights, Inc v Dep't of Natural Resources*, 80 Mich App 72, 80; 263 NW2d 290 (1977). See also *In re 1987-88 Medical Doctor Provider Class Plan*, 203 Mich App 707, 726-727; 514 NW2d 471 (1994); *Black v Dep't of Social Services*, 195 Mich App 27, 31; 489 NW2d 493 (1992). Thus defendant, as an administrative agency to whom rulemaking authority has been delegated, has discretion to allocate the burden of proof in an administrative hearing because the underlying state is silent on the issue, so long as the chosen allocation is consistent with the legislative scheme.

We conclude that Rule 13, which allocates the burden of proof to the petitioner in a driver's license reinstatement hearing, is consistent with the legislative scheme that seeks to impose severe sanctions on habitual violators of the drunk driving laws and protect the public. The requirement that persons who have a history of drinking and driving convictions must face the burden to prove entitlement to obtain a license to operate a motor vehicle is an appropriate implementation of the legislative intent.

D. Standard of Proof

As is true regarding the burden of proof, neither the MVC nor the APA expressly address the standard of proof required for a driver license appeal hearing. Therefore, we consider whether defendant may appropriately require petitioners to come forward with clear and convincing evidence in order to rebut the statutory presumption that an habitual violator should not be granted a driver's license.

Our Supreme Court has held that the requisite standard of proof in administrative proceedings is generally the same as that used in civil cases – a preponderance of the evidence. *BCBSM v Governor*, 422 Mich 1, 89; 367 NW2d 1 (1985); *Aquilina v General Motors Co*, 403 Mich 206, 210; 267 NW2d 923 (1978); LeDuc, at Section 6:43, Ch 6 – p 55. However, we are unable to locate any authority, and plaintiff has cited none, that prohibits an administrative agency from altering the standard of proof on a particular issue to "clear and convincing evidence" where appropriate. On the other hand, there is substantial authority suggesting that an administrative agency may indeed alter the standard of proof on a particular issue where the underlying statute does not delineate any particular standard. See e.g., *Cogan v Bd of Osteopathic Medicine & Surgery*, 200 Mich App 467, 470; 505 NW2d 1 (1993); *Dep't of Social Services v Emmanuel Baptist Preschool*, 150 Mich App 254, 261; 388 NW2d 326 (1986), modified on other grounds 434 Mich 380 (1990).

In *Cogan, supra* at 468, the petitioner doctor appealed an order of the Board of Osteopathic Medicine and Surgery which denied his request for reinstatement of his medical license. The board denied the petitioner's request for reinstatement of his license on the basis that the petitioner failed to prove by clear and convincing evidence that he met the statutory requirements for reinstatement. *Id.* at 469. The petitioner appealed the board's order to the circuit court which affirmed the board's ruling. *Id.* On appeal, a panel of this Court noted that in order to warrant reinstatement, the petitioner must meet the statutory requirements set by *clear and convincing evidence*, in accordance with the administrative rule, 1980 AACS, R 338.973(2), as well as various other conditions pursuant to the administrative rules. *Id.;* emphasis added. Finding that the petitioner did not meet the requisite conditions, this Court affirmed the board's denial of reinstatement. *Id.* at 471.

The circumstances in *Cogan* are analogous to those in the instant case. While the petitioner in *Cogan* did not directly challenge the standard of proof employed, this Court's analysis of the administrative requirements for license reinstatement contradict the trial court's conclusion in this case that the standard of proof in administrative proceedings must be a preponderance of the evidence. Accordingly, because the MVC

and APA are silent on the issue and because a higher standard is consistent with legislative intent, we find that defendant was not barred from establishing a standard of proof requiring clear and convincing evidence to rebut the statutory presumption against issuing a driver's license to an habitual violator. [Since the filing of this appeal, the legislature expressly adopted the "clear and convincing" standard to be used in driver's license reinstatement proceedings sin 1998 PA 351, effective October 1, 1999.]

IV. Conclusion

Applying the foregoing principles and rules to this case, we conclude that the trial court erred in ordering defendant to reconsider plaintiff's petition for reinstatement under a preponderance of the evidence standard, and in allocating the burden to prove plaintiff's ineligibility for reinstatement to defendant. Instead, we hold that, in accordance with Rule 13, an individual who files a petition for reinstatement of driving privileges has the burden to prove by clear and convincing evidence that he is entitled to reinstatement of his driver's license. Accordingly, we reverse the trial court's order remanding this matter to the defendant, and remand for circuit court review under MCL 257.303(1)(f); MSA 9.2003(1)(f).

Reversed and remanded for action consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Brian J. Zahra

STATE OF MICHIGAN

COURT OF APPEALS

JAVIER MARTINEZ RODRIGUEZ,

Petitioner-Appellee,

V

SECRETARY OF STATE OF THE STATE OF MICHIGAN,

Respondent-Appellant.

FOR PUBLICATION
February 16, 1996
9:10 a.m.

Nos. 167281; 177969
LC No. 93-456012-AL

Before: Bandstra, P.J., and Gribbs and C.O. Grathwohl J.J.

Bandstra P.J.

Respondent Secretary of State appeals orders of the circuit court issuing petitioner a restricted driver's license in these consolidated cases. We reverse.

The Secretary of State revoked petitioner's license, as required by MCL 257.303(2)(c); MSA 9.2003(2)(c), because petitioner had two alcohol-related driving convictions within seven years. The revocation was for a minimum of one year beginning September 30, 1992. Petitioner had the right to appeal the Secretary of State's decision to the circuit court under MCL 257.323(1); MSA 9.2023(1), but the circuit court's authority is limited in two ways. First, the circuit court can only set aside the Secretary of State's decision; it cannot be modified. MCL 257.323(6); MSA 9.023(6)(with respect to sanctions imposed under MCL 257.303(2)(c); MSA 9.2003(2)(c) and other listed subsections, the court is authorized only to "set aside" Secretary of State determinations in certain circumstances); compare MCL 257.323(3); MSA 0.2023(3)(authorizing the court to "affirm, modify, or set aside" other sanctions imposed). Second, the Secretary of State's decision can only be set aside if one of the statutory criteria is satisfied. MCL 257.323(6); MSA 9.2023(6). At the time the instant orders were entered, Section 323(6) provided, in relevant part:

> The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:
>
> (a) In violation of the Constitution of the United States, of the state constitution of 1963, or of a statute.

(b) In excess of the statutory authority of jurisdiction of the secretary of state.

(c) Made upon unlawful procedure resulting in material prejudice to the petitioner.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise or discretion.

(f) Affected by other substantial and material error of law. [After the orders in this case were entered, Section 323(6) was slightly amended; however, the changes are not substantive.]

The transcript of the hearing preceding the July 20, 1993 order convinces us that the court did not limit its review to the criteria specified in the statute:

> THE COURT: Well, I'm a little concerned about his drinking because he does have these two convictions – alcohol related offenses. But, I'll do – you say you haven't been drinking anymore? You cut out the booze, have you?
>
> THE PETITIONER: Yes, sir.
>
> THE COURT: Okay. Well, I'm going to take a chance on you. I'm going to grant you a restricted license to and from work during the course of employment, and we'll see what happens after that.

The trial court was without power to consider petitioner's representation that he was no longer drinking because it is "outside the statute". *McMillan v Secretary of State*, 155 Mich App 399, 403; 399 NW2d 538 (1986). Further, the statue did not authorize the court to modify the Secretary of State's decision, by granting petitioner a restricted driver's license, in any event. The July 20, 1993 order of the court must be reversed.

The same analysis requires that the July 28, 1994 circuit court order also must be reversed. Prior to entry of that order, petitioner had petitioned the Secretary of State to have his driving privileges restored. This relief had been denied on the basis of competent, material, and substantial evidence that petitioner had not completely abstained from the use of alcohol for the preceding six consecutive months. See MCL 257.323(6)(d); MSA 9.2023(6)(d); 1992 AACS, R 257.313. Because this Secretary of State determination satisfied the criteria listed in MCL 257.323(6): MSA 9.2023(6), the revocation of petitioner's license could not be set aside by the circuit court.

We reverse.

/s/ Richard A Banstra
/s/ Roman S. Gribbs
/s/ Casper O. Grathwohl

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OFMICHIGAN,

Plaintiff-Appellee,

V

CORY JO SCHUT,

Defendant-Appellant,

FOR PUBLICATION
March 17, 2005
9:00 a.m.

No. 256377
Barry Circuit Court
LC No. 04-000104-FH

Before: Schuette, P.J., and Fitzgerald and Bandstra, JJ.

SCHUETTE, J.

In this interlocutory appeal, defendant, Cory Jo Schut, appeals by leave granted from the circuit court's orders denying his motion to quash the information with respect to a charge of driving with a revoked license and causing death, MCL 257.904(4), and granting plaintiff's motion to preclude evidence that the victim was in fact the cause of her own death. We reverse and remand. We do not retain jurisdiction.

I. Facts

In January 2004, defendant was driving a pickup truck, with snowplowing equipment attached to its front, even though his driver's license had been revoked. He was traveling at apparently normal speeds when the victim crossed the road in front of him while riding a snowmobile. The snowmobile and the truck collided. Defendant failed either to stop at the scene or report the accident. All indications are that the victim died immediately upon impact with the truck.

The prosecutor charged defendant with second-degree murder, MCL 750.317, operating a motor vehicle with a revoked license causing death, MCL 257.904(4), and failing to stop at the scene of an accident involving death or serious bodily injury, MCL 257.617. District Court Judge Gary R. Holman expressly concluded that "even though the Defendant did not cause the accident, the vehicle he was operating did cause the death of [the victim]." The district court dismissed the murder charge, but bound defendant over for trial on the remaining charges.

The defense argued to the district court that because the victim herself had caused the accident resulting in her death, causation could not be attributed to defendant pursuant to MCL 257.904(4). The district court rejected this theory. Defendant reiterated his

position in trying to persuade the circuit court to quash the bindover. The circuit court declined to quash the bindover. Trial proceedings have been stayed pending resolution of this interlocutory appeal.

II. Standard of Review

This Court reviews a lower court's denial of a motion to quash de novo, and determines upon examination of the entire preliminary examination record whether the magistrate abused its discretion when it found probable cause to bind the defendant over for trial. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997). The decision whether to admit evidence is likewise reviewed for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 288; 531 NW2d 659 (1995).

Statutory interpretation is a question of law calling for review de novo. *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997).

III. Analysis

Defendant argues that applicability of MCL 257.904(4) requires actual causation, not mere involvement. We agree.

MCL 257.904 provides, in pertinent part, as follows:

> (1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified…of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state.
>
> ***
>
> (4) A person who operates a motor vehicle in violation of subsection (1) and who, by operation of that motor vehicle, causes the death of another person is guilty of a felony…

Although there is no case law interpreting the causation language in MCL 257.904(4), there is binding precedent interpreting MCL 257.625(4), a statute that reflects similar organization:

> (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated…
>
> ***
>
> (4) A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1)… and by the operation of that motor vehicle causes the death of another person is guilty of a crime…

Our Supreme Court has held that MCL 257.625(4) applies only where the unlawful intoxication substantially factored into the death in question. *People v Lardie*, 452 Mich 231, 259-260 and n 49; 551 NW2d 656 (1996). In *Lardie,* our Supreme Court ruled that identical language found in MCL 257.625(4), operation of a motor vehicle wile intoxicated causing death, required proof of causation, i.e., the prosecutor must establish that the particular defendant's decision to drive while intoxicated produced a change in that driver's operation of the vehicle that caused the death. An unavoidable killing is insufficient to justify an invocation of the statute. *Id.* 258 & n 48. "Otherwise, the statute would impose a penalty on a driver even when his wrongful decision to drive while intoxicated had no bearing on the death that resulted." *Id.* at 257.

"Identical language should certainly receive identical construction when found in the same act." *People ex rel Simmons v Munising Twp,* 213 Mich 629, 633; 182 NW 118 (1921). See also *Empire Iron Mining Partnership v Orhanen,* 455 Mich 410, 426 n 16; 565 NW2d 844 (1997). Our Supreme Court declared in *Lardie, supra*, that "[s]tatutes that create strict liability for all of their elements are not favored." *Id.* at 240. Also, even where a crime is created by statute, criminal intent is ordinarily an element of the crime. *Id.* at 239. However, the Court also stated:

> In order to determine whether a statute imposes strict liability or requires proof of a mens rea, that is, a guilty mind, this Court first examines the statute itself and seeks to determine the Legislature's intent. In interpreting a statute in which the Legislature has not expressly included language indicating that fault is a necessary element of a crime, this Court must focus on whether the Legislature nevertheless intended to require some fault as a predicate to finding guilt. [*Id.* at 239.]

Where the offense in question does not codify the common law and omits reference to the element of intent, this Court will examine the Legislature's intent in enacting the legislation to determine whether there is a mens rea requirement. *Id.* at 246. Courts may look to the legislative history of an act, as well as to the history of the time during which the act was passed, to ascertain the reason for the act and the meaning of its provisions. *People v Hall*, 391 Mich 175, 191; 215 NW2d 166 (1974). However, staff analyses and committee reports have limited value, *Frank W Lynch & Co v Flex Technologies, Inc,* 463 Mich 578, 587; 624 NW2d 180 (2001); *In re Complaint of Michigan Cable Telecommunications Associates*, 241 Mich App 344, 372-373; 615 NW2d 255 (2000). Although of limited value, the staff analysis of Public Act 342 of 1998, (Senate Fiscal Analysis, SB 268, 269, 625, 627, 869, 870, 953 and HB 4210, 4576, 4959-4961, 5122, 5123, 5951-5956, January 12, 1999, p.1.) indicates that MCL 257.904 was amended to add the language presently found in subsection (4) making a person who operates a motor vehicle with a suspended license and who, by operation of that motor vehicle, causes the death of another person guilty of a felony. This analysis indicates that the purpose of the act was to stiffen penalties for habitual drunk drivers. This intent is further evinced by the fact that this public act was among a group of public acts that revised the Michigan Vehicle Code to increase criminal penalties, license sanctions, and sanctions for drunk driving offenses, including operating a vehicle while under the influence of alcohol or controlled substances, as well as for driving without a license.

The *Lardie* Court noted that MCL 257.625(4) sought to reduce fatalities by deterring drunken driving and concluded, therefore, that the statute must have been designed to punish drivers when their *drunken* driving caused another's death. "Otherwise, the statute would impose a penalty on a driver even when his wrongful decision to drive while intoxicated had no bearing on the death that resulted. Such an interpretation of the statute would produce an absurd result by divorcing the defendant's fault from the resulting injury." *Lardie, supra* at 257. The fact that the intent of the legislation in *Lardie* was very similar to the intent of the legislation in the present case, indicates that an identical conclusion is warranted.

Binding authority interprets MCL 257.625(4) as requiring a causal link between the intoxication and the death, thus, we interpret MCL 257.904(4) as requiring a causal link between the suspended license and the death. To find otherwise would mean the statute would impose a penalty on a driver even when his wrongful decision to drive with a suspended license had no bearing on the death that resulted. We decline to reach such a harsh result.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ Richard A. Bandstra